

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M-58599-2023 (O&M)
Date of Decision:- 29.02.2024

ARUN KUKMAR

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present : Mr. Amit Khari, Advocate for the petitioner.

Mr. Surender Singh, AAG Haryana.

SANJIV BERRY, J. (ORAL)

1. The present petition filed under Section 482 Cr.P.C. has been preferred by the petitioner seeking quashing of the order dated 11.11.2021 (Annexure P-1) passed by learned Judicial Magistrate First Class, Sonapat and order dated 13.03.2023 (Annexure P-2) passed by learned Additional Sessions Judge, Sonapat, whereby the application for releasing the tractor on *superdari* was disposed of.

2. Learned counsel for the petitioner submits that FIR No.434 dated 26.09.2019 was registered at Police Station Sadar Sonapat under Sections 279, 304-A, 420 and 201 IPC and the vehicle No.HR-10X-5580 with trolley was involved in the said case and was thus confiscated. He submits that the application moved by the petitioner for release of the vehicle on *superdari* was allowed vide order dated 11.11.2021 by the

learned Judicial Magistrate First Class, Sonapat, however, an erroneous condition was imposed to deposit ₹4 lac as security, which would be kept in custody of the Court and would be released as compensation to the victim as per the orders of the Court. He further submits that the said order was challenged before the Court of Additional Sessions Judge, Sonapat, however, the same was dismissed vide order dated 13.03.2023 (Annexure P-2).

3. Learned counsel for the petitioner submits that the petitioner is a poor person and was earning his livelihood by doing carriage through the said tractor, which is lying unused in police custody since 2 years. Learned counsel submits that the conclusion of trial will take sufficient long time and with the passage of time, the vehicle will outlive its life. He further submits that petitioner is ready to furnish his affidavit that during the pendency of the case, he will not sell the tractor and will produce the same before the Court as and when required by the Court. He submits that the condition with respect to deposit of security to the tune of ₹4 lacs is erroneous and the same be substituted with the condition of furnishing personal bonds and security bonds.

4. Notice of motion.

5. On the asking of the Court Mr. Surender Singh, AAG Haryana accepts notice on behalf of respondent-State and has opposed the present petition by stating that the impugned orders have been rightly passed and are just and reasonable.

6. After hearing the respective submissions and perusing the

record, it transpires that on 25.09.2019, the complainant and deceased were going to their village on their respective motorcycles and when they reached village Baiyanpur at about 07:00 PM, a tractor-trolley coming from the wrong side caused accident with the motorcycle ridden by deceased. On this information, the FIR No.434 dated 26.09.2019 (*supra*) was registered and the tractor along with trolley was taken into police possession.

7. The perusal of impugned orders would reveal that the same have been passed by learned Magistrate and also learned revisional Court taking into consideration the Haryana Government Motor Vehicle (Amendment) Rules, 2018 which provide for prohibition against the release of motor vehicle involved in the accident resulting in death or bodily injury or damage to the property when such vehicle is not covered by Insurance policy. Admittedly, the vehicle in question was not insured at the relevant time, therefore, the learned Magistrate while passing the impugned order has not committed any illegality in imposing the condition to furnish security which is in consonance with the aforesaid amended provisions prevalent in the State of Haryana.

8. However, at the same time, it is apt to mention here that while passing the impugned order the learned Magistrate imposed the condition to furnish security in the form of deposit of ₹4,00,000/- as a condition precedent for release of vehicle in question. The vehicle in question, is lying in the police station premises for the last 2 years and as stated by the petitioner, was the source of livelihood of his family and while remaining parked in the police station it will certainly be damaged and ultimately turn

into a piece of junk, if remained unused with every passing day. A bare perusal of the impugned order further reveals that while assessing the amount of security, neither any rational criteria or method has been adopted by the Court nor is there is any judicious approach apparent therefrom, in taking the facts which weighed in the mind of learned Magistrate by virtue of which the “sufficient security” amount in question has been quantified. It is expected from the courts below to have indicated in the orders itself the factors and the attending peculiar circumstances which weighed in the mind of the Court while quantifying such amount, nevertheless, it was expected from the Court to have considered the matter in a pragmatic manner. Even in the provisions (supra) there is mention about the owner furnishing *“sufficient security to the satisfaction of the Court to pay the compensation that may be awarded in a claim case arising out of said accident”* meaning thereby, that method or mode adopted for assessing sufficient amount for the purpose of releasing motor vehicle in such a case has to be considered in the background of “just security” which is pivotal consideration. Such just security has to be the outcome of rational judicious approach based on equitable reasonableness, by passing a well reasoned speaking order and not by way of arbitrariness. In the impugned order there is no mentioning of the method adopted for assessing that the amount of ₹4 lac would be sufficient security for the release of the vehicle in question, as such, the order passed by learned Magistrate on this aspect is non speaking and cryptic. Therefore, in the light of the above discussion, it is deemed appropriate that the matter be remitted back to the learned trial Court to decide the same afresh.

9. Consequently, in the light of the above discussion, the impugned order dated 11.11.2021 (Annexure P-1) passed by learned Judicial Magistrate First Class, Sonapat and order dated 13.03.2023 (Annexure P-2) passed by learned Additional Sessions Judge, Sonapat, are hereby set aside and matter is remitted back to the learned Trial Court to decide the application afresh by making assessment with reasonable pragmatic approach and by passing a well reasoned order, taking into consideration all the facts and circumstances, in accordance with law.
10. With the above said observations, the petition stands disposed of.

(SANJIV BERRY)

JUDGE

29.02.2024

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |